

1 **JAMES S. LOCHEAD, ESQ.**

2 490 S. Fair Oaks Avenue

3 Pasadena, CA 91105

4 Phone: (626) 375-2295

5 Email: AggressiveDefense@hotmail.com

6 Attorney for

7 Mohamad Yassin Alcharihi

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10 **WESTERN DIVISION**

11 UNITED STATES OF AMERICA )

12 ) CASE NO.: **2:18-cv-04420-JFW-SS**

13 Plaintiff, )

14 ) **HONORABLE JOHN F. WALTER**  
15 ) **COURTROOM**

16 MOHAMAD YASSIN  
17 ALCHARIHI

18 Applicant & Claimant,

19 vs.

20 ONE ANCIENT MOSAIC

21 Defendant,

22 ) **NOTICE OF MOTION AND MOTION**  
23 ) **OF MOHAMAD YASSIN ALCHARIHI**  
24 ) **TO UNSEAL DOCUMENTS HELD BY**  
25 ) **US GOVERNMENT REGARDING THE**  
26 ) **MATTER OF THE SEIZURE OF ONE**  
27 ) **2000-YEAR-OLD ROMAN ERA**  
28 ) **MOSAIC OF HERCULES, CR MISC.**  
1 ) **NO. 16-00823-GW; MEMORANDUM OF**  
2 ) **POINTS & AUTHORITIES;**  
3 ) **DECLARATION OF MOHAMAD**  
4 ) **YASSIN IN SUPPORT**

5 ) Date: November 25, 2019

6 ) Time: 1:30 PM

7 ) Courtroom: Courtroom 7A;  
8 ) Hon. John F. Walker

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE THAT:** on November 25, 2019 at 1:30PM , or as  
3 soon thereafter as this matter may be heard in Courtroom 7A, of the above-entitled  
4 Court located at 350 W. 1st Street, Los Angeles, CA 90012 , Claimant Mohamad  
5 Yassin Alcharihi will move this Court for an Order To Unseal Documents Held By Us  
6 Government Regarding The Matter Of The Seizure Of One 2000-Year-Old Roman Era  
7 Mosaic Of Hercules, Cr Misc. No. 16-00823-Gw, hereby applies to this Court Ex Parte  
8 pursuant to Local Rule 79-5 and the rules of this Court, for an Order, unsealing  
9 documents in this matter.

10 This Motion is brought on the ground that the Claimant has both a common law  
11 and Constitutional right to the documents requested herein and good cause exists for  
12 this Order releasing the following categories of documents to the Claimant Mohamad  
13 Yassin Alcharihi:

14 1) From the UNITED STATES ATTORNEY'S OFFICE FOR  
15 THE CENTRAL DISTRICT OF CALIFORNIA, all  
16 information, documents, objects, and/or materials pertaining to  
17 any investigation (whether for asset forfeiture, criminal  
18 prosecution, or any other reason) of MOHAMAD YASSIN  
19 ALCHARIHI from 2010 until the present, including but not  
20 limited to formal or informal reports; information pertaining to  
21 or gathered through surveillance; search warrants, affidavits,  
22 and returns; internal notes and memoranda; inner-office  
23 directives; transcriptions and/or recordings of interviews;  
24 communications with other federal agencies or entities, state  
25 and federal law enforcement, and state and federal prosecutors;  
26 computer database entries or records, including any metadata  
27 about when certain data were entered, modified, deleted, or  
28 accessed.

1       2) From the FEDERAL BUREAU OF INVESTIGATIONS, all  
2       information, documents, objects, and/or materials pertaining to  
3       any investigation (whether for asset forfeiture, criminal  
4       prosecution, or any other reason) of MOHAMAD YASSIN  
5       ALCHARIHI from 2010 until the present, including but not  
6       limited to formal or informal reports; information pertaining to  
7       or gathered through surveillance; search warrants, affidavits,  
8       and returns; internal notes and memoranda; inner-office  
9       directives; transcriptions and/or recordings of interviews;  
10       communications with other federal agencies or entities, state  
11       and federal law enforcement, and state and federal prosecutors;  
12       computer database entries or records, including any metadata  
13       about when certain data were entered, modified, deleted, or  
14       accessed.

15       3) From the US DEPARTMENT OF HOMELAND SECURITY,  
16       all information, documents, objects, and/or materials pertaining  
17       to any investigation (whether for asset forfeiture, criminal  
18       prosecution, or any other reason) of MOHAMAD YASSIN  
19       ALCHARIHI from 2010 until the present, including but not  
20       limited to formal or informal reports; information pertaining to  
21       or gathered through surveillance; search warrants, affidavits,  
22       and returns; internal notes and memoranda; inner-office  
23       directives; transcriptions and/or recordings of interviews;  
24       communications with other federal agencies or entities, state  
25       and federal law enforcement, and state and federal prosecutors;  
26       computer database entries or records, including any metadata  
27       about when certain data were entered, modified, deleted, or  
28       accessed.

1       4) From the UNITED STATES ATTORNEY'S OFFICE FOR  
2       THE CENTRAL DISTRICT OF CALIFORNIA, all  
3       information, documents, objects, and/or materials pertaining to  
4       any investigation (whether for asset forfeiture, criminal  
5       prosecution, or any other reason) regarding ONE 2000-YEAR-  
6       OLD ROMAN ERA MOSAIC OF HERCULES, from 2010  
7       until the present, including but not limited to formal or informal  
8       reports; information pertaining to or gathered through  
9       surveillance; search warrants, affidavits, and returns; internal  
10      notes and memoranda; inner-office directives; transcriptions  
11      and/or recordings of interviews; communications with other  
12      federal agencies or entities, state and federal law enforcement,  
13      and state and federal prosecutors; computer database entries or  
14      records, including any metadata about when certain data were  
15      entered, modified, deleted, or accessed.

16      5) From the FEDERAL BUREAU OF INVESTIGATIONS, all  
17      information, documents, objects, and/or materials pertaining to  
18      any investigation (whether for asset forfeiture, criminal  
19      prosecution, or any other reason) ONE 2000-YEAR-OLD  
20      ROMAN ERA MOSAIC OF HERCULES, from 2010 until the  
21      present, including but not limited to formal or informal reports;  
22      information pertaining to or gathered through surveillance;  
23      search warrants, affidavits, and returns; internal notes and  
24      memoranda; inner-office directives; transcriptions and/or  
25      recordings of interviews; communications with other federal  
26      agencies or entities, state and federal law enforcement, and state  
27      and federal prosecutors; computer database entries or records,  
28      including any metadata about when certain data were entered,

1 modified, deleted, or accessed.

2 6) From the US DEPARTMENT OF HOMELAND SECURITY,  
3 all information, documents, objects, and/or materials pertaining  
4 to any investigation (whether for asset forfeiture, criminal  
5 prosecution, or any other reason) ONE 2000-YEAR-OLD  
6 ROMAN ERA MOSAIC OF HERCULES, from 2010 until the  
7 present, including but not limited to formal or informal reports;  
8 information pertaining to or gathered through surveillance;  
9 search warrants, affidavits, and returns; internal notes and  
10 memoranda; inner-office directives; transcriptions and/or  
11 recordings of interviews; communications with other federal  
12 agencies or entities, state and federal law enforcement, and state  
13 and federal prosecutors; computer database entries or records,  
14 including any metadata about when certain data were entered,  
15 modified, deleted, or accessed.

16 7) From the Internal Revenue Service, all information, documents,  
17 objects, and/or materials pertaining to any investigation  
18 (whether for asset forfeiture, criminal prosecution, or any other  
19 reason) of MOHAMAD YASSIN ALCHARIHI from 2010  
20 until the present, including but not limited to formal or informal  
21 reports; information pertaining to or gathered through  
22 surveillance; search warrants, affidavits, and returns; internal  
23 notes and memoranda; inner-office directives; transcriptions  
24 and/or recordings of interviews; communications with other  
25 federal agencies or entities, state and federal law enforcement,  
26 and state and federal prosecutors; computer database entries or  
27 records, including any metadata about when specific data were  
28 entered, modified, deleted, or accessed.

1       8) From the Internal Revenue Service, all information, documents,  
2       objects, and/or materials pertaining to any investigation  
3       (whether for asset forfeiture, criminal prosecution, or any other  
4       reason) of ONE 2000-YEAR-OLD ROMAN ERA MOSAIC  
5       OF HERCULES, from 2010 to the present, including but not  
6       limited to formal or informal reports; information pertaining to  
7       or gathered through surveillance; search warrants, affidavits,  
8       and returns; internal notes and memoranda; inner-office  
9       directives; transcriptions and/or recordings of interviews;  
10       communications with other federal agencies or entities, state  
11       and federal law enforcement, and state and federal prosecutors;  
12       computer database entries or records, including any metadata  
13       about when specific data were entered, modified, deleted, or  
14       accessed.

15       9) Any and all evidence or information pertaining to meetings  
16       and/or communications about MOHAMAD YASSIN  
17       ALCHARIHI between state law enforcement and federal law  
18       enforcement for *any* purpose, from 2010 until the present,  
19       including communications pertaining to asset forfeiture and  
20       criminal investigation - in particular, defendants seek all  
21       evidence and information pertaining to the state "hand off" of  
22       the case to one or more federal agencies.

23       10) Any and all evidence or information pertaining to meetings  
24       and/or communications about ONE 2000-YEAR-OLD  
25       ROMAN ERA MOSAIC OF HERCULES, between state law  
26       enforcement and federal law enforcement for *any* purpose, from  
27       2010 until the present, including communications pertaining to  
28       asset forfeiture and criminal investigation - in particular,

1 defendants seek all evidence and information pertaining to the  
2 state “hand off” of the case to one or more federal agencies.

3 11) Any and all evidence or information regarding government  
4 surveillance operations that occurred during and between 2010  
5 and the present by federal law enforcement (or its agents)  
6 regarding MOHAMAD YASSIN ALCHARIHI.

7 12) Any and all evidence or information regarding government  
8 surveillance operations that occurred between 2010 and the  
9 present by federal law enforcement (or its agents) regarding  
10 ONE 2000-YEAR-OLD ROMAN ERA MOSAIC OF  
11 HERCULES.

12 13) An order compelling the government to complete its disclosures  
13 by a certain date, to indicate which disclosures are responsive to  
14 which requests, to provide a list of items that have been  
15 requested but whose disclosure is refused, and prohibiting  
16 withholding of discovery or other materials to which the  
17 defense is entitled.

18 14) Any and all evidence or information, including all information  
19 subject to disclosure under Rule 16 in the possession, custody,  
20 or control of the government, or the existence of which is  
21 known, or by the exercise of due diligence could become  
22 known to the government, which evidence or information the  
23 government presently or at any time contemplates or considers  
24 using in its evidence at trial, in order to afford the Defendant an  
25 opportunity to move for suppression.

26 15) In addition to such other evidence as may be subject to  
27 F.R.Cr.P. Rule 12(b)(4), notice of the following specific  
28 evidence of information is requested pursuant to F.R.Cr.P. Rule

12(b)(4):

- a. Evidence that was obtained through the illegal March 19, 2016 seizure, *or that relates to or was derived from* the March 19, 2016 search or seizure.
- b. Evidence that was obtained through any warrantless search or seizure, or that relates to or was derived from any such search or seizure regarding MOHAMAD YASSIN ALCHARIHI;
- c. Evidence that was obtained through any warrantless search or seizure, or that relates to or was derived from any such search or seizure regarding ONE 2000-YEAR-OLD ROMAN ERA MOSAIC OF HERCULES;
- d. Evidence that was obtained through the execution of any search or seizure warrant, or that relates to or was derived from any such warrant regarding MOHAMAD YASSIN ALCHARIHI;
- e. Evidence that was obtained through the execution of any search or seizure warrant, or that relates to or was derived from any such warrant regarding ONE 2000-YEAR-OLD ROMAN ERA MOSAIC OF HERCULES;
- f. Evidence that was obtained through any electronic or mechanical surveillance or tape recordings, or that relates to or was derived from any such surveillance or recordings regarding MOHAMAD YASSIN ALCHARIHI;

- 1 g. Evidence that was obtained through any electronic or mechanical  
2 surveillance or tape recordings, or that relates to or was derived  
3 from any such surveillance or recordings regarding ONE 2000-  
4 YEAR-OLD ROMAN ERA MOSAIC OF HERCULES;
- 5 h. Evidence that was obtained through any use of a mail cover, or that  
6 relates to or was derived from any such mail cover regarding  
7 MOHAMAD YASSIN ALCHARIH;
- 8 i. Evidence that was obtained through any use of a mail cover, or that  
9 relates to or was derived from any such mail cover regarding ONE  
10 2000-YEAR-OLD ROMAN ERA MOSAIC OF HERCULE;
- 11 j. Any evidence relating to the exhibition or display of the  
12 defendant's photograph, likeness, image, or voice recording to  
13 anyone, not then employed by a law enforcement agency regarding  
14 MOHAMAD YASSIN ALCHARIH;
- 15 k. Any evidence relating to the exhibition or display of the  
16 defendant's photograph, likeness, image, or voice recording to  
17 anyone, not then employed by a law enforcement agency regarding  
18 ONE 2000-YEAR-OLD ROMAN ERA MOSAIC OF HERCULE;
- 19 l. Any written, recorded, or oral statements of MOHAMAD YASSIN  
20 ALCHARIH, or any other written, recorded, or oral statements by  
21 others intended to be offered as a statement of the MOHAMAD  
22 YASSIN ALCHARIH;
- 23
- 24
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- 26
- 27
- 28

m. (Due to the enormous volume of discovery in this case) Any evidence or information that falls within Rule 12(b)(4) (see ¶8) to *be specifically identified from among the items of other discovery* that has been or will be produced pursuant to Rule 16.

5 This motion is made following meet and confer communications, pursuant to  
6 Local Rule 7-3, with counsel for Defendants on October 17, 2019.

7        This Motion is based upon this notice of hearing, the Memorandum of Points  
8 and Authorities supporting said Motion, the Declaration of Mohamad Yassin Alcharihi  
9 and on all pleadings, papers, and records in the Superior Court Clerk's file; and any  
10 reply or supplemental memorandum or requests for judicial notice which may be  
11 hereafter filed in support of this motion, and upon oral argument presented at the time  
12 of hearing.

Dated: October 17, 2019

Respectfully,



**JAMES S. LOCHEAD**  
Attorney for Mohamad Alcharihi Yassin

# MEMORANDUM OF POINTS AND AUTHORITIES

To obtain *ex parte* relief, Applicant MOHAMAD YASSIN ALCHARIHI must show that he will be irreparably prejudiced if this Application is heard according to regular noticed motion procedures, and that he “is without fault in creating the crisis that requires *ex parte* relief.” (*Mission Power Engineering Co. v. Continental Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995).)

The US Government, had sought to keep the property of the Applicant and Claimant MOHAMAD YASSIN ALCHARIHI, without due process, in failing to timely file its Complaint against the Petitioner pursuant to 18 U.S.C. § 981(a)(1)(A) and (C). Despite numerous continuance, the US Government failed to file its Complaint. On April 1, 2018, the Honorable George H. Wu – U.S. District Court Judge, granted Applicant and Claimant MOHAMAD YASSIN ALCHARIHI’s Motion Opposing any Further Extensions by the U.S. Government in this matter.

Under civil forfeiture statutes, the government can only lawfully forfeit property if the government *specifically* traces the property to unlawful activity. The government may not rely on general or conclusory allegations of traceability. Here, as evidenced by the Government's continued delays, it has manifestly failed to uncover any actual tracing of the proceeds of unlawful activity to the property seized from Petitioner and Claimant.

Also at the time, the Honorable George H. Wu entertained the Request of Applicant and Claimant MOHAMAD YASSIN ALCHARIHI to have the records unsealed relating to The Matter of The Seizure of One 2000-Year-Old Roman Era Mosaic of Hercules, CR MISC. NO. 16-00823-GW.

## I. SUMMARY OF FACTS

Applicant/Claimant, MOHAMAD YASSIN ALCHARIHI (hereinafter referred to as "ALCHARIHI"), is a resident of Palmdale, California. ALCHARIHI is the sole individual owner of all the seized property described in detail herein which is the

1 subject of this complaint, including but not limited to a Greek Mosaic, known as the  
2 11<sup>th</sup> Trial of Hercules, which he imported as trash and restored to value spending over  
3 \$40,000 for the technique of restoration and preservation. Petitioner wants his property  
4 returned released and returned to him as the proper and sole owner of all property  
5 described in the Search and Seizure Warrant, at issue herein. (Declaration of  
6 Mohamad Yassin Alcharihi (hereinafter referred to as "Alcharihi Decl.") ¶ 3., Exhibit  
7 A.)

8 On March 19, 2016, Special Agents of the FBI and Department of Homeland  
9 Security, Homeland Security Investigations ("HSI") executed Search and Seizure  
10 Warrant No. 16-0589M, signed by the Honorable Jacqueline Choolijian, United States  
11 Magistrate Judge, for the search the residence of Petitioner MOHAMAD YASSIN  
12 ALCHARIHI (hereinafter referred to as "ALCHARIHI") in Palmdale, California. The  
13 search warrant directed agents to seize items constituting evidence, contraband, fruits,  
14 and/or instrumentalities of violations of 18 U.S.C. § 542 (entry of goods into the  
15 United States by means of false statements), and 18 U.S.C. § 545 (smuggling goods  
16 into the United States), including but not limited to: looted and/or stolen antiquities  
17 appearing to originate from Syria and/or Turkey, including mosaics and records related  
18 to antiquities. (Alcharihi Decl. ¶ 4, Exhibit A.)

19 Pursuant to the search warrant, agents seized items that agents believed  
20 constituted evidence, contraband, fruits, and/or instrumentalities of the listed offenses,  
21 including the "2000-year-old era mosaic of Hercules" (the "Mosaic"), with FBI  
22 identification number 3410160067, that is the subject of Petitioner's Petition. When  
23 the item was imported to the United States, it was in poor condition and in need of  
24 restoration. ALCHARIHI restored the Mosaic. (Alcharihi Decl. ¶ 5, Exhibit A.)

25 The Greek Mosaic is the most valuable item in the list of property seized and  
26 sought to be returned to the Petitioner. It is the only item for which the FBI gave an  
27 identification number as indicated in the Summary. The Mosaic, popularly described in  
28 the antiquities industry as "The Eleventh Labor of Hercules" is a famous Mosaic in the

1 history of Greek mythology. It was damaged and in no condition to be displayed or  
2 shown to viewers as an item in a museum or other display venue. (Alcharihi Decl. ¶ 6.)

3 Petitioner paid for the importation of the Mosaic and all the other items on the  
4 list. Some items, however, were computers and records which were not related to  
5 importation of the Mosaic, but they were still seized by the government. Unfortunately,  
6 this action has destroyed Petitioner's business of restoring items and conserving items  
7 which he legally acquires. (Alcharihi Decl. ¶ 7.)

8 ALCHARIHI filed all necessary claims of ownership and release of all  
9 properties. (Alcharihi Decl. ¶ 8.)

10 On, May 20, 2016, counsel for the Petitioner forwarded a Legal Memorandum to  
11 the FBI showing in detail based on the facts and the case law that they had made a  
12 mistake and that Islamophobia and racism was the only basis for the search and seizure  
13 by the FBI. The Legal Memorandum requested return of all the seized property.  
14 (Alcharihi Decl. ¶ 9, Exhibit B.)

15 The FBI denied ALCHARIHI's claim of ownership and for release, and on May  
16 17, 2016, the FBI initiated administrative forfeiture proceedings against the Mosaic by  
17 sending Petitioner a notice of the seizure. (Alcharihi Decl. ¶ 10.)

18 In response, Petitioner submitted a claim to the FBI contesting the administrative  
19 forfeiture of the Mosaic. On the second page of his administrative claim, Petitioner  
20 identified the Mosaic as a "Turkish Mosaic." (Alcharihi Decl. ¶ 11.)

21 In response to the FBI's proceedings, ALCHARIHI provided a document  
22 marked as Exhibit A to the administrative claim, an invoice for the purchase of the  
23 Mosaic. The invoice was written in Turkish and English and listed the business that  
24 sold the Mosaic to ALCHARIHI as "Ahmet Bostanci" with an address in a province in  
25 Turkey. The invoice included a statement: "We Hereby declare and Certify that the  
26 contents covered by this receipt are all Turkish origin and has nothing to do whit [sic]  
27 Israel what so ever." (Alcharihi Decl. ¶ 12.)

28 Additionally, ALCHARIHI submitted a copy of a Certificate of Origin to the

1 Administrative Claim, reflecting Turkey as the country of origin of the Mosaic.  
2 (Alcharihi Decl. ¶ 13.)

3 As a result of Defendants unlawful seizure and retention of his property,  
4 ALCHARIHI, has, and continues to incur, substantial hardship due to the government's  
5 seizure of the subject Mosaic and other property and its failure to initiate formal  
6 forfeiture proceedings or take action on Petitioner's request for return of the Mosaic  
7 and other subject property. (Alcharihi Decl. ¶ 14.)

8 In particular, ALCHARIHI needs to perform further restoration on the Mosaic  
9 and the FBI is unskilled, inexperienced and abysmally careless when it comes to  
10 preserving antiquities such as the Mosaic, other antiquities and properties, including  
11 but not limited to statues, and antiquities that need restoration and conservation. This  
12 seizure in addition is causing a loss of goodwill and the risk of permanently losing the  
13 interest of potential buyers of the Mosaic and other properties, and continuing  
14 infringement of his First Amendment rights. (Alcharihi Decl. ¶ 15.)

15

### 16 **III. LEGAL ANALYSIS**

#### 17 **A. A COMMONLAW RIGHT TO DOCUMENTS**

18 The United States Supreme Court has recognized a federal common law "right  
19 to inspect and copy public records and documents, including judicial records and  
20 documents." (*Nixon vs. Warner Comms, Inc.*, 435 U.S. 589, 597, 98 S. Ct. 1306, 55 L.  
21 Ed. 2d 570 (1978) (citations omitted).) "Unless a particular court record is one  
22 traditionally kept secret, a strong presumption in favor of access is the starting point"  
23 for the public access analysis. (*Kamakana vs. City & County of Honolulu*, 447 F.3d  
24 1172, 1178 (9th Cir. 2006) (internal quotation omitted) (quoting *Foltz vs. State Farm*  
25 *Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003).)

26 A party seeking to seal - or keep sealed - a judicial record "bears the burden of  
27 overcoming this strong presumption by meeting the 'compelling reasons'  
28 standard." (*Kamakana*, 447 F.3d at 1178 (citation omitted).) The "'compelling reasons'

1 standard applies to most judicial records.” (*Pintos v. Pacific Creditors Ass’n*, 605 F.3d  
 2 665, 677-78 (9th Cir. 2010) (citation omitted).)

3 The United States Supreme Court has held that the First Amendment guarantees  
 4 the press and the public the right to attend trials and pre-trial proceedings. (*Richmond*  
 5 *Newspapers, Inc. vs. Virginia*, 448 U.S. 555, 580 (1980); *Globe Newspaper Co. vs.*  
 6 *Superior Court*, 457 U.S. 596 (1982); *Press-Enterprise Co. vs. Superior Court*, 464  
 7 U.S. 501 (1984); *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 10 (1986).) This  
 8 First Amendment guarantee applies to judicial records as well as proceedings. (*Foltz*,  
 9 *supra*, 331 F.3d at 1135; *Kamakana*,)

10 Judicial records encompass only those documents that have been incorporated  
 11 into the court’s adjudicatory proceedings. (*United States v. Wecht*, 484 F.3d 194, 208  
 12 (3d Cir. 2007) (whether a document is a judicial record “depends on whether [the]  
 13 document has been filed with the court, or otherwise somehow incorporated  
 14 or integrated into a district court’s adjudicatory proceedings”). Materials filed with a  
 15 court are thus not automatically deemed judicial documents subject to public access;  
 16 before a filed document will be deemed part of the judicial record, it “must be relevant  
 17 to the performance of the judicial function and useful in the judicial process.” (*United*  
 18 *States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995); *see also United States v. El-Sayegh*,  
 19 131 F.3d 158, 163 (D.C. Cir. 1997) (finding that plea agreement filed with court was  
 20 not a judicial record, holding that “what makes a document a judicial record and  
 21 subjects it to the common law right of access is the role it plays in the adjudicatory  
 22 process”)).

23 In *Kamakana*, the Ninth Circuit recognized a “compelling reasons” standard for  
 24 the sealing of materials submitted in connection with dispositive motions. (*Kamakana*,  
 25 447 F.3d at 1179.) At the same time, however, the Ninth Circuit distinguished  
 26 materials submitted in connection with non-dispositive motions, to which the  
 27 “compelling reasons” standard does not apply. (*Kamakana*.) As the Ninth Circuit put  
 28 it, “[t]he public policies that support the right of access to dispositive motions, and

1 related materials, do not apply with equal force to non-dispositive  
 2 materials.” (*Kamakana* (citing *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*,  
 3 307 F.3d 1206, 1213 (9th Cir. 2002)). The higher standard applies to dispositive  
 4 motions because “the resolution of a dispute on the merits, whether by trial or  
 5 summary judgment, is at the heart of the interest in ensuring the ‘public’s  
 6 understanding of the judicial process and of significant public events.” (*Kamakana*).  
 7 On the other hand, “the public has less of a need for access to court records attached  
 8 only to non-dispositive motions because those documents are often “unrelated, or only  
 9 tangentially related, to the underlying cause of action.” (*Kamakana*.) Only when the  
 10 sealed materials are attached to a dispositive motion do they become subject to the  
 11 “compelling reasons” standard. ((*Kamakana*; *see also Foltz vs. State Farm Mut. Auto.*  
 12 *Ins. Co.*, 331 F.3d 1122, 1135-36 (9th Cir. 2003) (drawing same distinction between  
 13 treatment of dispositive and non-dispositive motions)).

14 An issue raised by the US Government in their numerous requests for  
 15 extensions, was that their investigations were incomplete. Now that it has been  
 16 determined that they would not be afforded any further time within which to file their  
 17 Complaint, it must be presumed, that their investigation, is now complete. This raises  
 18 the determination as to whether the common law right of access applies to warrant  
 19 materials after an investigation has ended. It has been held that the common law right  
 20 of access does not apply to warrant materials “*during* the pre-indictment stage of an  
 21 ongoing criminal investigation.” (*Times Mirror Co. v. United States*, 873 F.2d 1210,  
 22 1219, 1221 (9th Cir.1989).) The Courts have expressly reserved whether the common  
 23 law right of access applies to warrant materials after “an investigation has been  
 24 terminated.” (*Times Mirror*.)

25 It has been held, that the common law right to documents relating to a warrant,  
 26 exists under common law right of access principles. (*In re EyeCare Physicians of*  
 27 *Am.*, 100 F.3d 514, 517 (7th Cir.1996); *In re Newsday, Inc.*, 895 F.2d 74, 79 (2d  
 28 Cir.1990); *Baltimore Sun Co. v. Goetz*, 886 F.2d 60, 62 (4th Cir.1989); *United States v.*

1      *Wells Fargo Bank Account Number 7986104185*, 643 F.Supp.2d 577, 583–84  
 2 (S.D.N.Y.2009); *In re N.Y. Times Co.*, 585 F.Supp.2d 83, 92  
 3 (D.D.C.2008); *Commonwealth v. Fenstermaker*, 515 Pa. 501, 530 A.2d 414, 417–19  
 4 (1987); *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d  
 5 569, 575–76 (8th Cir.1988) (Bowman, J., concurring).

6      Succinctly, warrant materials are “judicial records and documents” for the  
 7 purposes of disclosure. “Affidavits in support of seizure or search warrants are central  
 8 to a court’s probable cause determination.” (*Wells Fargo*, 643 F.Supp.2d at 583.) As  
 9 such, they “clearly fall within the definition of ‘judicial documents.’” (*Wells*  
 10 *Fargo*, 643 F.Supp.2d; *Fenstermaker*, 530 A.2d at 418 (“[D]ocuments upon which a  
 11 magistrate bases a decision to issue a warrant are clearly judicial in character.”)).

12

13      **B. CONSTITUTIONAL RIGHT TO DOCUMENTS RELATING TO**  
 14      **SEARCH & SEIZURE WARRANTS**

15      In this instance, if can be argued by the US Government’s continued requests for  
 16 continuances and its failure to timely file the requisite Complaint, it could be easily  
 17 deduced, that the seizure of ALCHARIHI’s property was in direct violation of the 4<sup>th</sup>  
 18 Amendment to the US Constitution – which prohibits unreasonable searches and  
 19 seizures, and requires that “no Warrants shall issue, but upon probable cause,  
 20 supported by Oath or affirmation, and particularly describing the place to be searched,  
 21 and the person or things to be seized.” (U.S. Const. amend. IV.) “A search warrant that  
 22 is not issued ‘upon probable cause’ is invalid.” (*Millender v. County of Los*  
 23 *Angeles*, 620 F.3d 1016 (9th Cir. 2010) (en banc), quoting U.S. Const. amend. IV.  
 24 “Probable cause exists when there is a fair probability that contraband or evidence of a  
 25 crime will be found in a particular place.” (*Millender* (internal quotation marks  
 26 omitted).)

27      “To be valid, a search warrant must also particularly describe the things to be  
 28 seized.” (*Millender* (internal quotation marks and brackets omitted).) Therefore, the

1 Fourth Amendment imposes a requirement of “specificity,” which has two aspects: (1)  
 2 particularity, and (2) breadth. (*Millender*.) “Particularity is the requirement that the  
 3 warrant must clearly state what is sought. Breadth deals with the requirement that the  
 4 scope of the warrant be limited by the probable cause on which the warrant is  
 5 based.” (*Millender*, quoting *United States v. SDI Future Health, Inc.*, 568 F.3d 684,  
 6 702 (9th Cir. 2009).) The determination whether a warrant satisfies these requirements  
 7 turns on three factors: (1) whether probable cause exists to seize all items of a  
 8 particular type described in the warrant; (2) whether the warrant sets out objective  
 9 standards by which executing officers can differentiate items subject to seizure from  
 10 those which are not; and (3) whether the government was able to describe the items  
 11 more particularly in light of the information available to it at the time the warrant was  
 12 issued. (*Millender*, quoting *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir.  
 13 1986).

14

15 **C. THE GOVERNMENT’S AFFIRMATIVE DUTY TO DISCLOSURE**  
 16 **EVIDENCE**

17 The US Government has an “affirmative duty to disclose evidence favorable to a  
 18 defendant can trace its origins to early 20th-century strictures against misrepresentation  
 19 and is of course most prominently associated with... *Brady v. Maryland*, 373 U.S. 83,  
 20 87 (1963).” *Kyles v. Whitley*, 514 U.S. 419, 432 (1995). In *Brady*, the Supreme Court  
 21 held “suppression by the prosecution of evidence favorable to an accused upon request  
 22 violates due process where the evidence is material either to guilt or  
 23 punishment.” (*Brady*, 373 U.S. at 87.)

24       1. Documents being Requested:

25       In this regarding, ALCHARIHI requests the following documents:

26       1) From the UNITED STATES ATTORNEY’S  
 27                   OFFICE FOR THE CENTRAL DISTRICT OF  
 28                   CALIFORNIA, all information, documents,

objects, and/or materials pertaining to any investigation (whether for asset forfeiture, criminal prosecution, or any other reason) of MOHAMAD YASSIN ALCHARIHI from 2010 until the present, including but not limited to formal or informal reports; information pertaining to or gathered through surveillance; search warrants, affidavits, and returns; internal notes and memoranda; inner-office directives; transcriptions and/or recordings of interviews; communications with other federal agencies or entities, state and federal law enforcement, and state and federal prosecutors; computer database entries or records, including any metadata about when certain data were entered, modified, deleted, or accessed.

2) From the FEDERAL BUREAU OF INVESTIGATIONS, all information, documents, objects, and/or materials pertaining to any investigation (whether for asset forfeiture, criminal prosecution, or any other reason) of MOHAMAD YASSIN ALCHARIHI from 2010 until the present, including but not limited to formal or informal reports; information pertaining to or gathered through surveillance; search warrants, affidavits, and returns; internal notes and memoranda; inner-office directives; transcriptions and/or recordings of interviews; communications with other federal agencies or entities, state and

federal law enforcement, and state and federal prosecutors; computer database entries or records, including any metadata about when certain data were entered, modified, deleted, or accessed.

3) From the US DEPARTMENT OF HOMELAND SECURITY, all information, documents, objects, and/or materials pertaining to any investigation (whether for asset forfeiture, criminal prosecution, or any other reason) of MOHAMAD YASSIN ALCHARIHI from 2010 until the present, including but not limited to formal or informal reports; information pertaining to or gathered through surveillance; search warrants, affidavits, and returns; internal notes and memoranda; inner-office directives; transcriptions and/or recordings of interviews; communications with other federal agencies or entities, state and federal law enforcement, and state and federal prosecutors; computer database entries or records, including any metadata about when certain data were entered, modified, deleted, or accessed.

4) From the UNITED STATES ATTORNEY'S OFFICE FOR THE CENTRAL DISTRICT OF CALIFORNIA, all information, documents, objects, and/or materials pertaining to any investigation (whether for asset forfeiture, criminal prosecution, or any other reason) regarding ONE 2000-YEAR-OLD ROMAN ERA MOSAIC OF

HERCULES, from 2010 until the present, including but not limited to formal or informal reports; information pertaining to or gathered through surveillance; search warrants, affidavits, and returns; internal notes and memoranda; inner-office directives; transcriptions and/or recordings of interviews; communications with other federal agencies or entities, state and federal law enforcement, and state and federal prosecutors; computer database entries or records, including any metadata about when certain data were entered, modified, deleted, or accessed.

5) From the FEDERAL BUREAU OF INVESTIGATIONS, all information, documents, objects, and/or materials pertaining to any investigation (whether for asset forfeiture, criminal prosecution, or any other reason) ONE 2000-YEAR-OLD ROMAN ERA MOSAIC OF HERCULES, from 2010 until the present, including but not limited to formal or informal reports; information pertaining to or gathered through surveillance; search warrants, affidavits, and returns; internal notes and memoranda; inner-office directives; transcriptions and/or recordings of interviews; communications with other federal agencies or entities, state and federal law enforcement, and state and federal prosecutors; computer database entries or records, including

1 any metadata about when certain data were  
2 entered, modified, deleted, or accessed.

3 6) From the US DEPARTMENT OF HOMELAND  
4 SECURITY, all information, documents, objects,  
5 and/or materials pertaining to any investigation  
6 (whether for asset forfeiture, criminal prosecution,  
7 or any other reason) ONE 2000-YEAR-OLD  
8 ROMAN ERA MOSAIC OF HERCULES, from  
9 2010 until the present, including but not limited to  
10 formal or informal reports; information pertaining  
11 to or gathered through surveillance; search  
12 warrants, affidavits, and returns; internal notes and  
13 memoranda; inner-office directives; transcriptions  
14 and/or recordings of interviews; communications  
15 with other federal agencies or entities, state and  
16 federal law enforcement, and state and federal  
17 prosecutors; computer database entries or records,  
18 including any metadata about when certain data  
19 were entered, modified, deleted, or accessed.

20 7) From the Internal Revenue Service, all  
21 information, documents, objects, and/or materials  
22 pertaining to any investigation (whether for asset  
23 forfeiture, criminal prosecution, or any other  
24 reason) of MOHAMAD YASSIN ALCHARIHI  
25 from 2010 until the present, including but not  
26 limited to formal or informal reports; information  
27 pertaining to or gathered through surveillance;  
28 search warrants, affidavits, and returns; internal

notes and memoranda; inner-office directives; transcriptions and/or recordings of interviews; communications with other federal agencies or entities, state and federal law enforcement, and state and federal prosecutors; computer database entries or records, including any metadata about when specific data were entered, modified, deleted, or accessed.

- 8) From the Internal Revenue Service, all information, documents, objects, and/or materials pertaining to any investigation (whether for asset forfeiture, criminal prosecution, or any other reason) of ONE 2000-YEAR-OLD ROMAN ERA MOSAIC OF HERCULES, from 2010 to the present, including but not limited to formal or informal reports; information pertaining to or gathered through surveillance; search warrants, affidavits, and returns; internal notes and memoranda; inner-office directives; transcriptions and/or recordings of interviews; communications with other federal agencies or entities, state and federal law enforcement, and state and federal prosecutors; computer database entries or records, including any metadata about when specific data were entered, modified, deleted, or accessed.
- 9) Any and all evidence or information pertaining to meetings and/or communications about MOHAMAD YASSIN ALCHARIHI between

1 state law enforcement and federal law enforcement  
2 for *any* purpose, from 2010 until the present,  
3 including communications pertaining to asset  
4 forfeiture and criminal investigation - in particular,  
5 defendants seek all evidence and information  
6 pertaining to the state "hand off" of the case to one  
7 or more federal agencies.

8 10) Any and all evidence or information pertaining to  
9 meetings and/or communications about ONE  
10 2000-YEAR-OLD ROMAN ERA MOSAIC OF  
11 HERCULES, between state law enforcement and  
12 federal law enforcement for *any* purpose, from  
13 2010 until the present, including communications  
14 pertaining to asset forfeiture and criminal  
15 investigation - in particular, defendants seek all  
16 evidence and information pertaining to the state  
17 "hand off" of the case to one or more federal  
18 agencies.

19 11) Any and all evidence or information regarding  
20 government surveillance operations that occurred  
21 during and between 2010 and the present by  
22 federal law enforcement (or its agents) regarding  
23 MOHAMAD YASSIN ALCHARIHI.

24 12) Any and all evidence or information regarding  
25 government surveillance operations that occurred  
26 between 2010 and the present by federal law  
27 enforcement (or its agents) regarding ONE 2000-  
28 YEAR-OLD ROMAN ERA MOSAIC OF

## HERCULES.

- 13) An order compelling the government to complete its disclosures by a certain date, to indicate which disclosures are responsive to which requests, to provide a list of items that have been requested but whose disclosure is refused, and prohibiting withholding of discovery or other materials to which the defense is entitled.
- 14) Any and all evidence or information, including all information subject to disclosure under Rule 16 in the possession, custody, or control of the government, or the existence of which is known, or by the exercise of due diligence could become known to the government, which evidence or information the government presently or at any time contemplates or considers using in its evidence at trial, in order to afford the Defendant an opportunity to move for suppression.
- 15) In addition to such other evidence as may be subject to F.R.Cr.P. Rule 12(b)(4), notice of the following specific evidence of information is requested pursuant to F.R.Cr.P. Rule 12(b)(4):
  - a. Evidence that was obtained through the illegal March 19, 2016 seizure, *or that relates to or was derived from* the March 19, 2016 search or seizure.
  - b. Evidence that was obtained through any warrantless

1 search or seizure, or that relates to or was derived from  
2 any such search or seizure regarding MOHAMAD  
3 YASSIN ALCHARIHI;

4

5 c. Evidence that was obtained through any warrantless  
6 search or seizure, or that relates to or was derived from  
7 any such search or seizure regarding ONE 2000-  
8 YEAR-OLD ROMAN ERA MOSAIC OF  
9 HERCULES;

10

11 d. Evidence that was obtained through the execution of  
12 any search or seizure warrant, or that relates to or was  
13 derived from any such warrant regarding MOHAMAD  
14 YASSIN ALCHARIHI;

15

16 e. Evidence that was obtained through the execution of  
17 any search or seizure warrant, or that relates to or was  
18 derived from any such warrant regarding ONE 2000-  
19 YEAR-OLD ROMAN ERA MOSAIC OF  
20 HERCULES;

21

22 f. Evidence that was obtained through any electronic or  
23 mechanical surveillance or tape recordings, or that  
24 relates to or was derived from any such surveillance or  
25 recordings regarding MOHAMAD YASSIN  
26 ALCHARIHI;

27

28 g. Evidence that was obtained through any electronic or

1 mechanical surveillance or tape recordings, or that  
2 relates to or was derived from any such surveillance or  
3 recordings regarding ONE 2000-YEAR-OLD  
4 ROMAN ERA MOSAIC OF HERCULES;

5

6 h. Evidence that was obtained through any use of a mail  
7 cover, or that relates to or was derived from any such  
8 mail cover regarding MOHAMAD YASSIN  
9 ALCHARIH;

10

11 i. Evidence that was obtained through any use of a mail  
12 cover, or that relates to or was derived from any such  
13 mail cover regarding ONE 2000-YEAR-OLD  
14 ROMAN ERA MOSAIC OF HERCULES;

15 j. Any evidence relating to the exhibition or display of  
16 the defendant's photograph, likeness, image, or voice  
17 recording to anyone, not then employed by a law  
18 enforcement agency regarding MOHAMAD YASSIN  
19 ALCHARIH;

20

21 k. Any evidence relating to the exhibition or display of  
22 the defendant's photograph, likeness, image, or voice  
23 recording to anyone, not then employed by a law  
24 enforcement agency regarding ONE 2000-YEAR-OLD  
25 ROMAN ERA MOSAIC OF HERCULES;

26

27 l. Any written, recorded, or oral statements of  
28 MOHAMAD YASSIN ALCHARIH, or any other

written, recorded, or oral statements by others intended to be offered as a statement of the MOHAMAD YASSIN ALCHARIH;

m. (Due to the enormous volume of discovery in this case) Any evidence or information that falls within Rule 12(b)(4) (*see ¶8*) to be specifically identified from among the items of other discovery that has been or will be produced pursuant to Rule 16.

## IV. CONCLUSION

A compelling reason exists for the release of the documents as requested.

Respectfully,

James S. Packard

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**JAMES S. LOCHEAD**  
Attorney for Plaintiff, Mohammad Yassin Alcarahi